

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter Of:

MAY 14 2009

PUBLIC SERVICE
COMMISSION

Insight Phone of Kentucky, LLC)
)
Complainant)
)
v.)
)
Windstream Kentucky East, LLC)
)
and)
)
Windstream Kentucky West, LLC)
)
Defendants)

Case No. 2008-00335

**Response By Windstream Kentucky East, LLC and
Windstream Kentucky West, LLC To "Insight's
Motion For Procedural Order And Briefing Schedule"**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC ("Windstream") state as follows for their Response to "Insight's Motion For Procedural Order And Briefing Schedule:"

Introduction

1. Windstream objects to Insight's motion to the extent it seeks entry of Insight's "Stipulated Facts." Windstream also objects to the specific form of "Procedural Order and Briefing Schedule" submitted with Insight's motion.

2. The proposed stipulation is neither fair nor accurate, and Windstream never agreed to it. Nor did Windstream agree that its failure to object to the stipulation within some deadline unilaterally imposed by Insight without Windstream's knowledge could be considered acquiescence. In fact, Insight did not attempt to contact Windstream prior to filing its motion.

3. Windstream continues to believe that if the parties can agree on stipulated facts that Insight's complaint presents only questions of law to be resolved by briefing. A 30-day, 30-day, 15-day briefing schedule beginning once the stipulation is filed is acceptable to Windstream.

Windstream Has Acted Reasonably

4. At the February 24, 2009 Informal Conference, counsel for the Commission noted that because Insight was the complainant in this matter the burden was on Insight to prosecute its complaint.

5. On or about March 25, 2009 Counsel for Windstream returned a call from Insight's counsel to discuss a procedural schedule. Counsel for Windstream was informed that Mr. Zielke was in a multiple-day trial and that he would return the call when able to do so.

6. Counsel for Insight returned the March 25, 2009 call on April 3, 2009 following the completion of the trial. The parties discussed their agreement that if the facts could be stipulated that Insight's complaint presented only legal questions. Counsel for Windstream noted Windstream's belief that the facts set out in Windstream's answer provided a basis for the stipulation. Counsel for Insight agreed to draft and provide proposed stipulations to Windstream.

7. On April 14, 2009 at 2:50 p.m. counsel for Windstream received by e-mail transmission Insight's proposed stipulation. The e-mail message did not contain a deadline or statement that the failure to respond within a fixed period would be considered as acquiescence by Insight. In any event, such a statement would have not bound Windstream.

8. Following its receipt on April 14, 2009, Windstream began reviewing the proposed stipulation.

9. Although some of the stipulations are acceptable to Windstream, others are tendentious, inaccurate or represent Insight's arguments rather than facts. *See, e.g.*, Stipulated Facts at ¶ 11 ("Windstream has refused to provide account numbers and thus interfered with the customers' right to choose a telephone provider.")

10. On May 13, 2009 Insight served its Motion for Procedural Order and Briefing Schedule without contacting counsel for Windstream concerning the status of Windstream's response.

Windstream's Proposal

11. Windstream believes it can provide a written counterproposal to Insight's "Stipulated Facts" no later than May 21, 2009.

12. Windstream requests that the parties be granted until June 5, 2009 in which to reach agreement on stipulated facts. If unable to do so by that date they will inform the Commission of the need for a hearing.

Windstream's Objection To Insight's Proposed
Proposed "Procedural Order And Briefing Schedule"

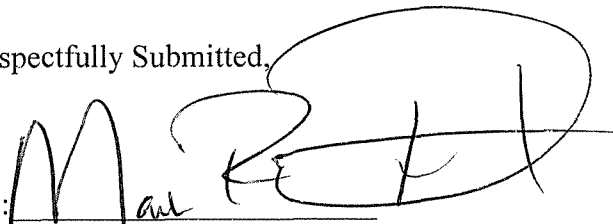
13. Windstream objects to the proposed "Procedural Order and Briefing Schedule" to the extent it is premised upon the Commission's entry of Insight's proposed "Stipulated Facts."

Wherefore, Windstream Kentucky East, LLC and Windstream Kentucky West, LLC respectfully request that:

1. "Insight's Motion For Procedural Order And Briefing Schedule" be denied; and
2. The parties be granted until June 5, 2009 in which to negotiate a statement of stipulated facts.

Respectfully Submitted,

By:

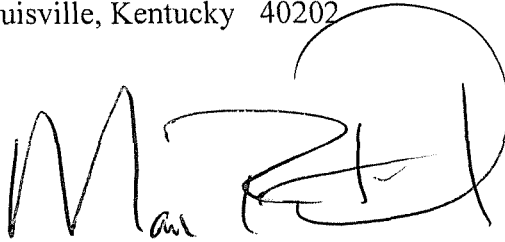

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, and e-mail transmission on this 14th day of May, 2009 upon:

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